IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 27TH JUNE 2007 / 6TH ASHADHA 1929

WP(C).No. 18672 of 2007(W)

PETITIONER:

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1. JAYAN THOMAS, S/O.M.THOMAS, RESIDING AT V/714, SOUMYA, RAJEEV GARDENS, PERINGAVU, THRISSUR.

2. T.P.LOUIS, S/O.T.M.PORINJU, RESIDING AT THALAKKOTTOOR HOUSE, NETTISHERY P.O., MUKKATTUTHARA, THRISSUR.

3. K.J.AJAYAKUMAR, S/O.K.C.JOSE, RESIDING AT 'SANDRAM', CHEROOR, THRISSUR.

4. T.A.HAMZA, S/O.ABDULLAKUTTY, RESIDING AT THAMARAKKULATHIL HOUSE, THOTTAPPADY, MANNUTHY P.O., THRISSUR.]

5. JOY PAUL, S/O.C.V.PAUL, RESIDING AT CHIRAYATH MANJYIL, MANNUTHY P.O., THRISSUR.

6. R.CHANDRASEKHARAN, S/O.M.GOVINDA PILLAI RESIDING AT PARANGATTE HOUSE, UNIVERSITY NAGAR, KAU.P.O., THRISSUR.

BY ADV. SRI.V.V.SURENDRAN
SRI.P.A.HARISH

RESPONDENTS:

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1. THE STATE OF KERALA, REPRESENTED BY SECRETARY, DEPARTMENT OF TAXES, SECRETARIAT, THIRUVANANTHAPURAM.

2. COMMERCIAL TAX OFFICER, OFFICE OF THE DEPUTY COMMISSIONER, DEPARTMENT OF COMMERCIAL TAXES, THRISSUR.

3. KERALA AGRICULTURAL UNIVERSITY, REPRESENTED BY ITS REGISTRAR, OFFICE OF THE KERALA AGRICULTURAL UNIVERSITY, VELLANIKKARA, THRISSUR.

R1 AND R2 BY G.P. SRI. MOHAMMED RAFIQ
R3 BY SC SRI. RANJITH THAMPAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 27/06/2007, ALONG WITH WPC NO. 14579 OF 2007 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.N.RAMACHANDRAN NAIR,J.

W.P.C. NO. 18672 & 14579 OF 2007

Dated this the 27th day of June, 2007

C.R.

JUDGMENT

These connected cases are filed by contractors engaged by the Agrl. University for carrying out various items of construction and other works for the Agrl. University. By the Finance Act, 2006, Section 8(i)(a) is introduced to the Kerala Value Added Tax Act providing for compounding rate of tax at 3% for any works contractor who executes work for Government Departments, and for local authorities. According to the petitioners, University is like a Government Department as it is fully funded by Government and therefore the above provision which does not cover them is discriminatory. Government Pleader on the other hand contended that University is a statutory authority and is not comparable with a Government department in any respect, no matter some funds for the University are flowing from the Government as well.

2. I do not think the Section is invalid as discriminatory merely

because concessional rate of tax is provided only for works executed for Government departments and local authorities. Local authorities are local self governments and they are comparable with government departments. There are ever so many Government Corporations and statutory bodies funded and managed by Government. Kerala State Electricity Board, Kerala State Road Transport Corporation, Water Authority, Railways etc. are organisations which are under the control of Government and funded by Government to make up for their shortages. University is certainly a statutory Body partly funded by Government. Even though there would have been nothing improper if Government corporations or statutory bodies were included along with Govt. departments and local authorities for compounded rate of tax, it cannot be said that non-inclusion of such organisations will affect the validity of statutory provision because Art. 14 of Constitution applies to all in same class. Funding by Government does not make an organisation equal to Govt. department or Local Authority. Therefore concessional rate of tax provided for works executed for Govt. Departments or Local Authorities does not violate Art. 14 of the

Constitution. If Legislature consciously wanted to limit concessional rate of tax only to works done for Govt. departments and local authorities, then this Court has no authority to declare inclusion of other organisations. It is for the petitioners to bring to the notice of Government the anomaly in the legislation or requirement of inclusion of other organisations for the purpose of concessional compounded rate of tax in respect of construction works and if any such representation is filed, the Government should consider the same. Even though petitioner has produced orders issued by the Commercial Tax Officer, Wayanad, granting the benefit of Section 8(i)(a) in respect of work for Kerala Agrl. University, I do not think the order of the Officer is justified under the Section. It is for the higher authorities to correct the wrong orders issued by subordinate authorities.

WPs. are disposed of as above.

(C.N.RAMACHANDRAN NAIR)
Judge